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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re MARIA G. et al., Persons Coming Under the Juvenile Court Law.	B303606
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,  Plaintiff and Respondent,  v.  JORGE G.,  Defendant and Appellant.	Los Angeles County Super. Ct. No. 19CCJP06435 A–B

APPEAL from an order of the Superior Court of  
Los Angeles County, Craig S. Barnes, Judge. Affirmed.

Maureen L. Keaney, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Assistant  
County Counsel, and Kimberly Roura, for Plaintiff and  
Respondent.

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## **INTRODUCTION**

Jorge G. (father) appeals from the juvenile court's jurisdiction finding and disposition order declaring his two daughters dependents of the court. On appeal, father argues insufficient evidence supports the court's finding that his issues with alcohol abuse affect his ability to care for the children or place them at risk of serious harm. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. The Family's Background and Prior Child Welfare History**

Father and D.V. (mother)<sup>1</sup> have been in a relationship for 19 years. They have two daughters, Maria (born in 2004) and Rosa (born in 2006). Mother also has an adult daughter, F.V., who is Maria's and Rosa's half-sister and lives with the family. By the time this case began, Maria had been diagnosed with autism, and Rosa was suffering from separation anxiety after mother was hospitalized for an extended period of time.

In 2013, the Department of Children and Family Services (Department) received a report that father and mother engaged in domestic violence after father got drunk. The Department investigated the claim but did not find any evidence to support it. In 2014, the Department received a report alleging father drank excessively and the parents engaged in domestic violence. Although the Department confirmed that father drinks excessively and had recently been arrested for driving under the influence, the family denied he ever abused anyone. By the end of

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<sup>1</sup> Mother is not a party to this appeal.

the investigation, father was attending Alcoholics Anonymous classes and no longer drank in the home. The Department closed the referral as inconclusive.

Around 2015, father suffered a heart attack “because of his alcohol consumption.” After father underwent open-heart surgery, his doctor told him he would die if he kept drinking alcohol. Father stopped drinking after the surgery.

In 2017, the Department received a referral alleging F.V. physically and emotionally abused Rosa. During the investigation, the family confirmed that father had not drunk alcohol for the past two years. The Department concluded that the “incidents reported by ... Rosa appear to be typical sibling issues” and deemed the referral unfounded.

## **2. Initiation of the Current Dependency Proceedings**

The family most recently came to the Department’s attention in the summer of 2019, after father started drinking again. The first incident occurred around July 2019, when father drank beer and margaritas at Maria’s 15th birthday party. Father got into an argument with a security guard after the guard tried to steal part of a beer keg that father had rented. Father didn’t get into a physical altercation with the security guard or anyone else at the party.

The second incident occurred in late August 2019, after mother and father got into an argument while father was drunk. When mother and the children returned from a vacation to El Salvador they found father “heavily drunk” at home. Mother and father began to argue in front of the children after mother confronted father about his drinking. Mother called the police and reported father was “aggressive, kicking doors, [and] threatening family members with bodily harm[] and ... arguing

with neighbors.” When officers arrived, they informed mother that they couldn’t do anything because her argument with father was a family dispute. Mother denied that father hit her or that she hit father during the argument.

In early September 2019, one of the Department’s social workers interviewed the family. According to mother, father used to drink every day of their relationship before his heart attack. Mother had banned alcohol in the house, but she believed father drank in his car or after he left work because he was often intoxicated when he got home. Mother didn’t know how much alcohol father consumed per day because she never saw him drinking in the house. When father would come home drunk, mother would take Rosa and Maria to walk around the neighborhood until father calmed down or went to sleep.

Mother reported that father “has not stopped” drinking since he drank at Maria’s birthday party. Rosa also reported that “father comes home after work already drunk.” According to mother, father started by drinking small amounts of beer but has since increased his intake to include a mix of beer and tequila. Mother believes father thought it was safe to drink again after he did not suffer “any medical reaction” to alcohol.

Mother, Rosa, and Maria are not afraid of father when he’s drunk. According to mother and Rosa, father usually does not become aggressive when he drinks, and the family denied that he ever hit mother or any of the children. Mother and father argue about father’s drinking problem, and father is sometimes verbally abusive toward mother because he believes she might leave him for someone else.

Maria claimed, however, that father tried to hit F.V. after he returned from Maria’s birthday party. And F.V. reported that

father sometimes becomes aggressive when he drinks. Although he has never hit mother or the children, father often fights with other people. According to F.V., the police came to their previous home nearly every weekend because father would fight with the neighbors when he was drunk.

Rosa is aware father has health problems caused by alcohol, and she is scared that he will die if he keeps drinking. According to F.V., father's drinking makes Rosa anxious and causes Rosa and Maria to cry. Rosa's therapist reported that the child is "parentified" and focuses on father's behavior when he drinks. Rosa's hands sweat, and it is hard for her to swallow when she worries about her parents' health problems. In the therapist's opinion, father's drinking "can be considered emotional abuse."

Father acknowledged that he used to have a problem with alcohol and would often drink excessively before his heart surgery. But he believed his heart attack was caused by a weight problem and high cholesterol, not alcohol. He also denied that he currently has a drinking problem, telling the Department he's only a "social drinker." According to father, he now drinks occasionally and never in excess. Father told the Department that he does not have time to submit to drug or alcohol tests because he works nearly 12 hours a day, six days a week.

Father admitted that he has two convictions for driving under the influence, one from 1998 and another from 2014. He denied that he continues to drink and drive because he needs his driver's license for his job. Father also denied driving the children to school because they live close enough to walk.

In late September 2019, mother reported that father had not consumed any alcohol for the past two or three weeks.

In early October 2019, the Department filed a dependency petition on Maria's and Rosa's behalf, alleging father has a history of substance abuse and abuses alcohol on a daily basis, which renders him incapable of providing regular care for the children. The petition further alleged that father's alcohol abuse places the children at risk of serious physical harm and that mother failed to protect the children by allowing father to continue living in the home.

At the initial hearing, the juvenile court found the petition alleged a prima facie case under Welfare and Institutions Code<sup>2</sup> section 300. The court ordered the children to remain released to their parents' custody under the Department's supervision.

### **3. Jurisdiction and Disposition**

The Department interviewed the family again in November 2019. Father claimed he last drank alcohol about three months ago. He only drinks outside the home, usually with his neighbors.

Mother initially told the social worker that father last consumed alcohol about one month ago. But she also reported that although father doesn't drink in the house, he "usually arrives home under the influence." According to mother, once father starts drinking, he becomes "hooked" and cannot stop. Mother had started working on Fridays and Saturdays as a food vendor, but she claimed she never leaves the children alone in father's care when he drinks or allows father to drive the children after he's consumed alcohol.

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<sup>2</sup> All undesignated statutory references are to the Welfare and Institutions Code.

The last time Rosa saw father drunk was in August 2019, the night mother and the children came home from El Salvador. Rosa hadn't seen father consume any alcohol since then, but she saw father vomit blood one night after he ate dinner. Rosa was "worried ... because it reminded her of when father drank alcohol regularly and ... would vomit blood."

Two days after the Department interviewed the family, father submitted to an alcohol and drug test. The test came back negative for alcohol or any other substances. Father still would not commit to regular voluntary drug and alcohol testing, however, because of his work schedule.

At the jurisdiction and disposition hearing in early December 2019, the court sustained the petition as pled. The court found father abuses alcohol, refuses to acknowledge he has a problem with alcohol abuse, and minimizes the extent of his drinking. When father drinks, he becomes aggressive, which places the children at risk of harm. The court also found mother accommodates father's alcohol abuse.

After declaring the children dependents, the court ordered them to remain placed in their parents' custody. The court ordered father to participate in a 12-step drug and alcohol program and to submit to random drug and alcohol testing every week, mother to participate in individual counseling to address the effects of substance abuse on children, and the children to participate in individual counseling to address case issues, including "panic attacks."

Father appeals.

## DISCUSSION

Father contends insufficient evidence supports the court's jurisdiction finding under section 300, subdivision (b). Specifically, father argues the Department failed to prove he abuses alcohol or that his use of alcohol endangers the children. As we explain, sufficient evidence supports the court's finding.

### 1. Applicable Law and Standard of Review

"Section 300, subdivision (b)(1), authorizes a juvenile court to exercise dependency jurisdiction over a child if the 'child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent ... to adequately supervise or protect the child.' " (*In re E.E.* (2020) 49 Cal.App.5th 195, 205, italics omitted (*E.E.*)). To establish jurisdiction under section 300, subdivision (b), on substance abuse grounds, the Department must prove: (1) "substance abuse by a parent ... , (2) causation, and (3) serious physical harm to the child, or a substantial risk of such harm." (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724–725.)

The legislature has identified substance abuse as a specific threat to maintaining a safe home: "The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child." (§ 300.2.) But "substance abuse, without more, is an insufficient ground to assert jurisdiction in dependency proceedings under section 300." (*In re L.W.* (2019) 32 Cal.App.5th 840, 849 (*L.W.*)). Rather, the Department must show the parent's substance abuse harms the children or places them at risk of serious harm. (*In re Drake M.*



(2012) 211 Cal.App.4th 754, 766–767 (*Drake M.*); see *L.W.*, at p. 850 [mother’s substance abuse caused mother to engage in dangerous behavior that placed the child at substantial risk of physical harm].)

Risk to a child from substance abuse can be established in two ways: (1) through proof of “‘an identified, specific hazard in the child’s environment,’ ” or (2) through proof that the child is of “‘tender years’ ”—i.e., six years old or younger—in which case a “finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 766–767, italics omitted; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219 (*Christopher R.*) [defining “‘tender years’ ” as six years old or younger].)

To show the child faces a risk of harm at the time of the jurisdiction hearing, there “must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 136.) In determining whether conduct is likely to recur, courts may consider evidence of the parent’s behavior in the past. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) A parent’s denial of wrongdoing or failure to recognize the negative impact of her conduct is also relevant to determining risk under section 300. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 735, fn. 4; see also *In re A.F.* (2016) 3 Cal.App.5th 283, 293 [“‘[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.’ ”].)

We review a juvenile court’s jurisdiction finding for substantial evidence. (*E.E.*, *supra*, 49 Cal.App.5th at p. 206.) We will affirm the finding if it is supported by evidence that is

reasonable, credible, and of solid value. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) “ ‘[W]e look to see if substantial evidence, contradicted or uncontradicted, supports [the court’s findings]. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citations.]” (*In re R.T.* (2017) 3 Cal.5th 622, 633.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*R.V.*, at p. 843.)

## **2. Substantial evidence supports the jurisdiction finding.**

As a preliminary matter, we note that sections 300 and 300.2 do not define “substance abuse.” Consequently, courts have developed a range of tests to determine whether a parent suffers from substance abuse. For instance, in *Drake M.*, the court held that “a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to (1) show that the parent or guardian at issue had been diagnosed as having a current substance abuse problem by a medical professional[;] or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in [the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-4)].” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 766.)

*Drake M.* applied the following definition of substance abuse from the DSM-4: “ ‘[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a

12-month period: ¶ (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household); ¶ (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); ¶ (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct); and ¶ (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).’ [Citation.]” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 766.)

But the court in *Christopher R.* explained that *Drake M.* provides a “generally useful and workable definition of substance abuse” that is “not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court.” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218.) As the court in *Christopher R.* noted, the DSM-IV-TR has since been replaced by the fifth edition of the DSM (DSM-5), which applies a “more broadly defined classification” of “‘substance use disorders’” and identified 11 relevant criteria to determine whether someone has a substance use disorder. (*Christopher R.*, at p. 1218, fn. 6.) Those criteria include: cravings and urges to use the substance; spending a lot of time getting, using, or recovering from use of the substance; sacrificing important social, occupational or recreational activities because of substance use; and failing to

fulfill obligations at work, home or school because of substance use. (*Ibid.*)

Here, there is substantial evidence to support the court's finding that father suffers from substance abuse under either standard. Although there is no official diagnosis in the record, father's doctor advised him that the heart attack he suffered around 2015 was caused by excessive drinking and warned father that if he continued to consume alcohol he faced a high risk of death. And while father abstained from drinking alcohol for several years after his heart surgery, he began drinking again on a regular basis after Maria's birthday party when he discovered he didn't experience any serious health-related side effects.

Father also suffered two convictions for driving under the influence, one in 1999 and another in 2014. And there was evidence that father continued to drink and drive, despite those convictions, after this case was initiated. Specifically, father told the Department that he needed to drive to keep his job, and mother reported that father "usually arrives home under the influence." Finally, father's drinking caused disruptions at home. When father drank, he and mother often argued, he became aggressive and threatened to hit family members, Rosa became anxious, and both children often cried. In short, substantial evidence supports the court's finding that father abuses alcohol.

Because Rosa and Maria were teenagers at the time the family came to the Department's attention, only the first category of risk—that father's alcohol abuse posed a specific hazard to the children's safety—applies in this case. (*Drake M., supra*, 211 Cal.App.4th at pp. 766–767.) To be sure, there was evidence that at the time of the jurisdiction and disposition hearing, the children had yet to be harmed by father's alcohol abuse. Although

father's drinking was taking an emotional toll on Rosa, the children otherwise appeared to be healthy, well-fed, and regularly attending school. Nevertheless, father's alcohol abuse posed a serious risk of harm to the children.

Maria and F.V. reported that father becomes aggressive when he drinks. Although father had yet to hit any family members, he often fought with neighbors. And Maria told the Department that father tried to hit F.V. after drinking at Maria's birthday party. In addition, when father got drunk in August 2019, mother told the police that he was aggressive, kicking doors, and threatening to hurt members of the family. While mother and Rosa told the Department that father was not aggressive when he drank, those statements were contradicted by Maria's and F.V.'s accounts of father's behavior and mother's call to the police in August 2019. The court, therefore, reasonably could infer that father's drinking posed a serious risk of physical harm to the children.

Aggressive behavior aside, father repeatedly denied that he has a drinking problem and minimized his drinking habits after this case began. (See *E.E.*, *supra*, 49 Cal.App.5th at p. 213 [mother's dishonesty about the extent of her drug use supports a finding that her substance abuse issues place the children at risk of harm].) Father also continued to drink and drive, despite suffering two prior convictions for driving under the influence. And, although father and mother denied that father ever drove the children after he drank alcohol or watched the children by himself, the court reasonably could have discredited those statements based on the parents' minimization of father's drinking habits and father's denial that he continued to drive drunk. In any event, father's decision to continue to drink and

drive displays a serious lack of judgment that could “spill[] over into areas that will pose a substantial risk of physical harm” to the children. (See *L.W.*, *supra*, 32 Cal.App.5th at p. 850 [mother’s arrests for driving under the influence and conviction for reckless driving showed her substance abuse went beyond the mother’s “private moments alone” and bled into her child’s life].)

### **DISPOSITION**

The juvenile court’s jurisdiction finding and disposition order are affirmed.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.